IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

W.P. Nos. 10915 and 12883 of 2004

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WRIT PETITION NO : 10915 of 2004

Between:

1 Gundu Satyanarayana Murthy S/o. G.S.R.B. Sastry
R/o. Malhar 2/2003, Sahara Sates, kMansoorabad, Hyd 68.
2 G.L.K. Chakraarthy, S/o. G. Ramana Murthy
R/o. H.No. B-11, P&T Colony, Ashoknagar, Hyd-20.

..... PETITIONERS

AND

1 The Chief General Manager, BSNL, Doorshanchar Bhavan, Nampally, Hyd.
2 The Prl. General Managr (Admn), Suralok Complex, Hyd.
3 The General Manager (Dev.,) A.P. Telecom Circle, Doorshanchar Bhavan, Nampally, Hyd.
4 The Dy. Engineer Telecom A/T (Transmission) 4th Floor, Charminar Telephone Exchange Bulds, Charminar , Hyd.
5 The Dy. Engineer Telecom Transmission Installation (HQ), 1st Floor, Triveni Complex, Abdis, Hyd.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to direct the respondents to grant temporary status to the petitioners and consequential regularization as regular Mazdoor on par with others similarly placed as they have

completed 240 days of continuing services as on 01.08.1998 with all consequential benefits by holding proceedings Lr.No.TA/TI-HD/BSNL/E4/02-03/23Lr.No. TA/TI-Hd/BSNL/E4/02-03/24, dt. 07.01.2003 issued in respect of petitioners No.1 and 2 respectively as bad, illegal, irrational, discriminatory, arbitrary and violative of Art. 14, 16 and 21 of constitution of India, By issuance of Writ of Mandamus or any other writ.

Counsel for the Petitioner: MR.J.SUDHEER

Counsel for the Respondents : MR.R.S.MURTHY

WRIT PETITION NO : 12883 of 2004

Between:

1 M. Srinivasa Rao S/o Sambasiva Rao
Bharat Sanchar NIgam Limited, O/o The Deputy General Manager (Transmission Installation)
Triveni Complex, Abids, Hyderabad R/o Nalluru Post, Repalle Mandal, Guntur District
2 G. Raju S/o Rayappa
Nigam Limited, O/o The Deputy GeneralManager, (Transmission Installation), Triveni Complex,
Abids, Hyderabad, R/o Kesavapuram Post Damaracherla Mandal, Nalgonda District

..... PETITIONERS

AND

1 The Chief General Manager,Bharat Sanchar Nigam Limited, Door Sanchar Bhavan, Nampally Station Road, Hyderabad
2 The Principal General Manager (Administration), Suryalok Complex Hyderabad 500 001
3 The General manager (Development), Andhra Pradesh Telecom Circle, 3rd Floor, Triven Complex, Abids Hyderabad 500 001
4 The Divisional Engineer Telecom Transmission Installation (HQ), 1st Floor, Triveni Complex, Abids, Hyderabad-500 001
5 The Divisional Engineer Telecom, transmission Installation (HQ), Chuttugunta, Lions Club Road, Vijayawada-500 004
6 The Sub Divisional Engineer Telecom, Transmission Installation (HQ) 1st Floor, Triveni Complex, Abids, Hyderabad 500 001
7 The Sub-Divisional Engineer Telecom, Transmission Installation (HQ), 1st Floor, chuttugunta, Lions Club Road, Vijayawada-500 004

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or Direction(s) essentially in the nature of Writ of Mandamus declaring the action of the Respondents herein in not considering the case of the

petitioners herein for grant of temporary status while considering similarly placed persons as bad, illegal, arbitrary, unjust discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India, and consequently direct the Respondents herein to grant temporary status to the petitioners herein as they have completed 240 days of continuous service as on 01-08-1998 and are still continuing as Casual Labours.

Counsel for the Petitioner: MR.J.SUDHEER

Counsel for the Respondents: R.S. Murthy

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. Nos. 10915 and 12883 of 2004

O R D E R:

Since common question is involved in these two writ petitions, they are disposed of by a common order.

Aggrieved by the proceedings dated 7.1.2003 through which the claim of the petitioners for grant of temporary status and consequential regularization was rejected by the 5th respondent, these writ petitions are filed.

The brief averments in W.P. 10915 may be stated as follows:

The petitioners herein filed O.A. 102 of 2004 before the Central Administrative Tribunal, Hyderabad Bench for the same relief as sought for in this writ petition and the Tribunal by interim directions dated 22.1.2004 directed the respondents to maintain status quo until further orders and the petitioners were functioning as Casual Mazdoors. Thereafter, they were orally terminated and were not allowed to function from 13.2.2004. While so, O.A. 102 of 2004 was closed for want of jurisdiction. Therefore, the present writ petition is

filed.

According to the petitioners, they were appointed as Casual Mazdoors in the year 1994 and 1995 respectively and they are continuing as such till date. The petitioners were being paid consolidated wages. The petitioners made a representation requesting the respondents for confermation of temporary status and also for regularization of their service. Some persons who are juniors to the petitioners were given temporary status. As on 1.8.1998 the petitioners have completed 240 days of service but no temporary status was conferred upon them. The General Manager is authorized to create any post in pursuance of the proceedings of the Department of Telecom dated 29.6.2000, but the respondents are not taking any action. The Tribunal by its order dated 5.9.2002 directed the applicants to make a representation giving the particulars of their engagements along with the supporting documents within a period of one month and the respondents are directed to consider their representations. Accordingly, in pursuance of the orders of the Tribunal, the petitioners submitted a representation on 26.9.2002 but without considering the representation the case of the petitioners was rejected. Hence the present writ petition.

The respondents filed their counter affidavit stating that there are disputed questions of fact of engagement as casual labour and payment of wages thereof which are the subject matter of investigation by the Central Government Industrial Tribunal on a reference under Section 10 of I.D. Act. The allegation that the petitioners were engaged in the years 1994 and 1995 and were continuing is baseless. There is no scope for engagement of any casual labour except for a period of 60 days which was later extended to 100 days vide letter dated 15.6.1999. The said communication authorized engagement of contractual labour to meet the emergent situations and the petitioners' engagement if any is admittedly intermittent as per the requirement for the specified time bound works and do not confer any right for continuity and conferment of temporary status. Therefore, the writ petition is devoid

of merit.

The brief averments in W.P. 12883 of 2004 may be stated as follows:

The petitioners were appointed as Casual Mazdoors in the year 1994 and they are being paid consolidated wages. Number of representations were made by the petitioners for conferment of temporary status and also for regularization but as per C.G.M.T. Memo dated 28.6.2000 all those persons who are juniors to the petitioners herein but had completed 240 days of service as on 1.8.1998 were given temporary status in the cadre of Mazdoors. The petitioners have completed 240 days of service as on 1.8.1998 but no action has been taken. As per the proceedings of the Department of Telecom Services dated 29.6.2000 a direction is given to adjust the casual labours against available vacancies of regular Mazdoors and the General Manager is also authorized to create post of regular Mazdoors as per the prescribed norms. The respondents herein have not taken any action in respect of the petitioners for conferment of temporary status. As a matter of fact, the respondents themselves have considered insofar as 42 candidates are concerned. The petitioners are similarly situated persons and they have completed 240 days in a year for more than one year. In spite of furnishing al the required documents, the respondents are not considering the request of the petitioners. Hence they pray to allow the writ petition.

The respondents filed counter affidavit with the same allegations as contained in W.P. 10915 of 2004.

The learned counsel for the petitioners vehemently contended that the documents which were issued by the Departmental authorities would indicate that the petitioners worked as Casual Mazdoors and they have put up more than 240 days and therefore they are entitled for conferment of temporary status. He further contended that the impugned proceedings dated 7.1.2003 is not based upon any records of the respondents. Even though the documents were produced before the respondents, the same have

not been considered with a view to reject the claim of the petitioners and hence he prays to quash the impugned proceedings dated 7.1.2003. He further contended that the writ petitioners in W.P. 12883 of 2004 are seeking for consideration of grant of temporary status since they have completed 240 days as on 1.8.1998 and therefore necessary directions may be given to consider the case of the petitioners.

On the other hand, learned counsel for the respondents contended that there is no record to show that the petitioners have worked for more than 240 days. There are serious disputed questions of fact with regard to engagement as casual labours and payment of wages. Therefore, this is not the Forum to decide these aspects and engaging the petitioners as casual labours cannot be verified as the records have been weeded out as per the detention schedule and therefore the writ petitions are liable to be dismissed.

As per the directions of the Tribunal in O.A. 1505 of 2001 dated 5.9.2002 a direction is given directing the applicants to make a representation giving the particulars of their engagement along with the supporting documents within a period of one month from the date of communication and thereafter the respondents were directed to consider the representation given by the applicants as per the Rules and communicate their decision within a period of two months from the date of receipt of such representation. Accordingly, the impugned proceedings dated 7.1.2003 have been passed, which reads as follows:

> "In your representation cited above, you had contended that you had been engaged as Casual Mazdoor from 5.9.1994 to 15.2.1996 under the control of DGM (TI) HD. On verification, it is found that there is no official record in support of your claim. Further you have claimed that you had been working under DE A/T Transmission, Hyderabad after February – 1996. But you have not

produced documental support for the same. As such, your request for conferring Temporary status is regretted".

This proceedings would indicate that the petitioners did not produce any document in support of their claim. A specific direction is given by the Central Administrative Tribunal directing the petitioners to make a representation along with the documents in support of their claim. The case of the petitioners is that they have furnished all the documents along with the application but the same are not considered. Along with these writ petitions several copies of the documents were filed. If the petitioners in these writ petitions filed the documents, they should have been considered by the Divisional Manager, Telecom. As seen from the record it is clear that the petitioners have not filed any documents before the Divisional Engineer, Telecom. Therefore, the Divisional Engineer, Telecom could not be in a position to take appropriate decision because of non-filing of the documents. There is no communication or indication that the writ petitioners filed all the relevant documents before the 4th respondent. There are some laches on the part of the petitioners in not filing the documents. Had they filed the documents now filed along with these writ petitions, then it would have been possible for the 4th respondent to verify the genuineness and correctness of the certificates and documents. Though it is not stated by the petitioners, but the possibility of non-availability of those documents at the time of giving representation on 4.10.2002 cannot be ruled out. The documents which are filed along with the writ petitions might not be available with the petitioners at the time of making representation. Perhaps that is the reason why the petitioners gave only representation to the 4th respondent. As the contents in the representation were not sufficient to verify the truthfulness and correctness of the employment of the petitioners and no documents have been produced, the request of the petitioners for conferring temporary status was regretted.

Number of documents were filed along with the writ petitions. The correctness or genuineness of these documents has not been specifically denied or disputed in the counter filed by the respondents. At the time of filing of the counter before the Administrative Tribunal it is specifically stated that on verification of records the petitioners are found to be not the employees but thereafter the respondents have destroyed the records. Even after destruction of those records the respondents can ascertain the truth and genuiness of those documents filed along with the writ petitions by sending to the various offices. So, basing on these documents and after ascertaining the correctness, the respondents can take appropriate decision with regard to the nature of the employment and period of employment so as to confer temporary status to the petitioners.

Insofar as W.P. 12883 of 2004 is concerned, their case is that they were employed by the respondents on daily wages in the year 1997 and according to them they have completed 240 days of service as on 1.8.1998. It is also their case that similarly situated Casual Mazdoors who have completed 240 days of service were given temporary status. In this case also it is for the respondents to take appropriate decision whether the petitioners have worked for more than 240 days and whether similarly situated persons were conferred temporary status as casual labours.

Therefore, both the writ petitions are disposed of with a direction to the writ petitioners to file all the documents available with them before the 4th respondent including any appointment orders, wage payment slips, muster rolls, certificates etc. within one week from the date of receipt of a copy of this order and on such filing, the 4th respondent after ascertaining their genuineness shall take appropriate decision in accordance with the Rules and Regulations of the respondent-BSNL within a period of three months thereafter. In the circumstances, no order as to costs.

K.C. Bhanu, J.

Date: 28--12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chief General Manager,Bharat Sanchar Nigam Limited, Door Sanchar Bhavan, Nampally Station Road, Hyderabad
2 The Principal General Manager (Administration), Suryalok Complex Hyderabad 500 001
3 The General manager (Development), Andhra Pradesh Telecom Circle, 3rd Floor, Triven Complex, Abids Hyderabad 500 001
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8. The Dy. Engineer, Telecom Transmission Installation (HQ), 1st Floor,

Triveni Complex, Abids, Hyderabad.

9. The Dy. Engineer, Telecom A/T (Transmission), 4th Floor, Charminar Telephone Exchange Buildings, Hyderabad.

10. 2 C.D. copies.